

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-355 substituted “procurements greater than the simplified acquisition threshold” for “procurements, other than small purchases.”.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 427 of this title.

§ 417a. Procurement data**(a) Reporting**

Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) Definitions

For purposes of this section the terms “small business concern owned and controlled by women” and “small business concerns owned and controlled by socially and economically disadvantaged individuals” shall be given the same meaning as those terms are given under section 637(d) of title 15 and section 204 of this Act, and the term “qualified HUBZone small business concern” has the meaning given that term in section 632(p) of title 15.¹

(Pub. L. 100-533, title V, § 502, Oct. 25, 1988, 102 Stat. 2697; Pub. L. 105-135, title VI, § 604(f)(2), Dec. 2, 1997, 111 Stat. 2634.)

REFERENCES IN TEXT

Section 204 of this Act, referred to in subsec. (b), is section 204 of Pub. L. 100-533, which is set out as a note under section 637 of Title 15, Commerce and Trade.

CODIFICATION

Section was enacted as part of the Women’s Business Ownership Act of 1988, and not as part of the Office of Federal Procurement Policy Act which comprises this chapter.

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1997—Subsec. (a). Pub. L. 105-135, § 604(f)(2)(A), inserted “the number of qualified HUBZone small business concerns,” after “report to the Office of Federal Procurement Policy” and a comma after “controlled by women”.

Subsec. (b). Pub. L. 105-135, § 604(f)(2)(B), inserted “, and the term ‘qualified HUBZone small business con-

cern’ has the meaning given that term in section 632(p) of title 15.” before period at end.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of Title 15, Commerce and Trade.

§ 418. Advocates for competition**(a) Establishment, designation, etc., in executive agency**

(1) There is established in each executive agency an advocate for competition.

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 414(3) of this title) to serve as the advocate for competition;

(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) Duties and functions

The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 414(3) of this title—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and¹

(4) prepare and transmit to such senior procurement executive an annual report describing—

(A) such advocate’s activities under this section;

(B) new initiatives required to increase competition; and

(C) barriers to full and open competition that remain;

(5) recommend to the senior procurement executive of the executive agency goals and the

¹ So in original.

¹ So in original. The word “and” probably should not appear.

plans for increasing competition on a fiscal year basis;

(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) Responsibilities

The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(Pub. L. 93-400, §20, as added Pub. L. 98-369, div. B, title VII, §2732(a), July 18, 1984, 98 Stat. 1197; amended Pub. L. 103-355, title VIII, §8303(a), Oct. 13, 1994, 108 Stat. 3398.)

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1994—Subsec. (c). Pub. L. 103-355 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.”

EFFECTIVE DATE OF 1994 AMENDMENT

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EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2318.

§ 418a. Rights in technical data

(a) Regulations; legitimate proprietary interest of United States

The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations prescribed as part of the single system of Government-wide procurement regulations as defined in section 403(4)¹ of this title. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Serv-

ices Act of 1949 [41 U.S.C. 251 et seq.], that the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United States, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

(b) Unlimited rights; technical data; developed with Federal funds; unrestricted, royalty-free right to use; rights under law

(1) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) of this section shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.], that the United States shall have unlimited rights in technical data developed exclusively with Federal funds if delivery of such data—

(A) was required as an element of performance under a contract; and

(B) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future.

(2) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) of this section shall provide, with respect to executive agencies that are subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.], that the United States (and each agency thereof) shall have an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Government) technical data developed exclusively with Federal funds.

(3) The requirements of paragraphs (1) and (2) shall be in addition to and not in lieu of any other rights that the United States may have pursuant to law.

(c) Factors; regulations

The following factors shall be considered in prescribing regulations pursuant to subsection (a) of this section:

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 631 of title 15.

(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

¹ See References in Text note below.